

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF WHEATLAND
LEVYING A ONE-HALF CENT TRANSACTIONS AND USE TAX
FOR ESSENTIAL CITY SERVICES TO BE ADMINISTERED BY THE
STATE BOARD OF EQUALIZATION**

The City Council of the City of Wheatland does ordain as follows:

SECTION 1. The purpose of this ordinance is to impose a voter-approved one-half cent transactions and use tax within the City of Wheatland. The transactions portion of this tax shall be imposed for the privilege of selling tangible personal property at retail. The use portion of this tax shall be imposed on the storage, use and other consumption of tangible personal property within the City. This ordinance is adopted pursuant to California Constitution Article XI, sections 5 and 7, and Revenue and Taxation Code sections 7251, *et seq.*, and 7285.9, and other applicable law.

SECTION 2. New Chapter 3.34 shall be added to the Wheatland Municipal Code to read as follows:

CHAPTER 3.34

TRANSACTIONS AND USE TAX

Sections:

- 3.34.010 Short title.
- 3.34.020 Definitions.
- 3.34.030 Purpose.
- 3.34.040 Contract with the State Board of Equalization.
- 3.34.050 Imposition of Transaction Tax.
- 3.34.060 Place of Sale.
- 3.34.070 Imposition of Use Tax; Use Tax Rate.
- 3.34.080 Use of Transactions and Use Tax Revenue.
- 3.34.090 Adoption of Provisions of State Law.
- 3.34.100 Adoption of Provisions of State Law – Limitations.
- 3.34.110 Permit Not Required.
- 3.34.120 Exemptions And Exclusions.
- 3.34.130 Amendments.
- 3.34.140 Enjoining Collection Forbidden.
- 3.34.150. Termination Date.

3.34.010 Short Title.

This chapter may be referred to as the “Transactions and Use Tax Ordinance of the City of Wheatland.”

3.34.020 Definitions.

For the purpose of this Chapter 3.34 the following terms shall have the meanings given in this section:

(a) The words “in the City” shall mean and include all territory within the limits of the City of Wheatland, as the same may be revised from time to time.

(b) “Operative date” shall mean the first day of the first calendar quarter commencing more than one hundred ten days after the City voters adopt a measure approving the imposition of a transactions and use tax; provided that, if the City has not entered into a contract with the State Board of Equalization as required by section 3.34.040 hereof prior to such date, the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

(c) “Termination date” shall mean the calendar day that occurs 10 years after the operative date.

3.34.030 Purpose of this Chapter.

The City Council hereby declares that this Chapter is adopted to achieve the following purposes, among others, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

(a) To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to levy a transactions and use tax if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose, which election shall be consolidated with a regularly scheduled general election for members of the City Council, in accordance with Section 2(b) of Article XIII C of the California Constitution.

(b) To adopt retail transactions and use tax regulations that incorporate provisions identical to those of the Transactions and Use Tax Law of the state insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

(c) To adopt retail transactions and use tax regulations that impose a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

(d) To adopt retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time minimize the burden of record keeping upon persons subject to taxation under the provisions of this article.

3.34.040 Contract with the State Board of Equalization.

Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance, Chapter 3.34, pursuant to Revenue and Taxation Code section 7270, and other applicable law.

3.34.050 Imposition of Transaction Tax.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the City at the rate of one-half of one percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date and before the termination date.

3.34.060 Place of Sale.

For the purposes of this Chapter 3.34, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or its agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event that a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3.34.070 Imposition of Use Tax; Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date and before the termination date for storage, use or other consumption in said territory at the rate of one-half of one percent of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

3.34.080 Use of Transactions and Use Tax Revenue.

All revenue from the transactions and use tax that is levied under this Chapter 3.34 shall be deposited into the general fund of the City and used for essential general City services.

3.34.090. Adoption of Provisions of State Law.

(a) Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 (commencing with Section 6001) of the Revenue and Taxation Code, and all regulations promulgated under those sections, are hereby adopted and made a part of this ordinance as though fully set forth herein.

(b) Except as otherwise provided in this ordinance and except insofar as they are inconsistent with this ordinance, the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code (commencing with Section 7251), and all regulations promulgated under those sections, are hereby adopted and made a part of this ordinance as though fully set forth herein.

3.34.100 Adoption of Provisions of State Law – Limitations.

The following modifications shall apply to the statutes and regulations that are incorporated by reference and made a part of this Chapter 3.34 as specified in Section 3.34.090:

(a) The City shall be substituted for the State of California wherever the state is named or referred to as the taxing agency. However, the substitution shall not be made:

(1) Where the word “state” is used as part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

(2) Where the result of that substitution would require action to be taken by or against the City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Chapter 3.34;

(3) In those sections, including but not necessarily limited to sections referring to the exterior boundaries of the state, where the result of the substitution would be to:

(A) Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property that would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the state under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or

(B) Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property that would not be subject to tax by the state under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code;

(4) In Revenue and Taxation Code Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828.

(b) The word “City” shall be substituted for the word “State” in the phrase “retailer engaged in business in this state” and in the definition of that phrase at Revenue and Taxation Code Section 6203.

3.34.110 Permit Not Required.

If a seller’s permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, no additional seller’s permit shall be required under this Chapter 3.3.4.

3.34.120. Exemptions and Exclusions.

(a) There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

(b) There are exempted from the computation of the amount of transactions tax the gross receipts from:

(1) Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

(2) Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

(A) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

(B) With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

(3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

(4) A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

(5) For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(c) There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

(1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

(2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

(3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

(4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

(5) For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(6) Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

(7) "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

(d) Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.34.130 Amendments.

(a) All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

(b) Notwithstanding subdivision (a), no subsequent amendments of any statute or regulation that is incorporated by reference and made a part hereof shall affect the rate of the transaction and use tax that is levied under this Chapter 3.34.

3.34.140. Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected

3.34.150. Termination Date.

This Chapter 3.34 shall no longer be effective after the termination date unless it is extended by a vote of the City electors at an election, pursuant to Revenue and Taxation Code section 7285.9.

SECTION 3. Severability. The provisions of this ordinance are severable, and the invalidity, unenforceability or unconstitutionality of any section, portion or part of this ordinance shall not affect the validity of the remainder of the ordinance.

SECTION 4. Election. An election on the measure regarding whether the City should levy a transactions and use tax pursuant to this ordinance shall be held together with the statewide general

election, pursuant to City Council Resolution __-10, which requested that the City's election be consolidated with the statewide general election, which is scheduled to be held on November 2, 2010.

SECTION 5. Effective Date. This ordinance shall become effective only if it is approved by a majority vote of the City voters voting on the measure at the November 2, 2010 election. If approved by the voters, this ordinance shall become effective on the first day of the first calendar quarter commencing more than one hundred ten days after the City voters adopt a measure approving the levying of the transactions and use tax; provided that, if the City shall not have entered into a contract with the State Board of Equalization as required by section 3.34.040 hereof prior to such date, the operative date shall be the first day of the first calendar quarter following the execution of such a contract. (Revenue & Taxation Code, § 7265.)

SECTION 6. Posting. Within 15 days after the date of passage of this ordinance, the City Clerk shall post a copy of it in at least three public places in the City.

INTRODUCED by the City Council on the __ day of _____ 2010.

PASSED AND ADOPTED by the City Council of the City of Wheatland on the __ day of _____, 2010 by the following two-thirds vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Enita Elphick, Mayor

Attest:

Lisa J. Thomason, City Clerk

I hereby certify that the foregoing is a true and correct copy of City of Wheatland Ordinance No. ____, which ordinance was duly introduced, adopted and posted pursuant to law.

Lisa J. Thomason, City Clerk